

REMARKS

Claims 33-37, 43, 45-55, 57, and 60 are now in the application. By this Amendment, claims 33-37 have been amended. Support for the amendment to claim 33 is found at least at original claims 44, 45, and 51. Claims 43 and 45-55 have previously been withdrawn by the Examiner and may be canceled upon the allowance of claims 33-37, 57, and 60. Claims 38-42 and 44 have been canceled without prejudice or disclaimer. No new matter has been added.

Applicants appreciate the indication in the Office Action that claim 44 recites allowable subject matter. However, Applicants respectfully submit that amended claim 33 is in condition for allowance for the reasons set forth above.

Claim 33 is objected to because the claim recitation hairspray is misspelled. Claim 33 has been amended to obviate this objection.

Claim 44 is objected to because the composition cannot consist of the recited monomer and further comprise a carrier. The cancelation of claim 44 renders this objection moot.

Claims 33-36, 40-42, and 56-61 are rejected under 35 U.S.C. §102(b) as being anticipated by WO 02/38638 to Dausch et al., as evidenced by US Patent No. 7,015,294 to Dausch et al., which is a US counterpart thereof.

Claim 33, as amended, recites at least one copolymer obtained by free radical polymerization of a monomer mixture consisting of:

- a) tert-butyl acrylate,
- b) methacrylamide and/or N-(tert-butyl)acrylamide,
- c) acrylic acid,
- d) optionally, methacrylic acid, and

e) optionally, N-(tert-butyl)aminoethyl (meth)acrylate or N-[3-(dimethylamino)propyl]methacrylamide or N-vinylimidazole.

As appreciated by the Examiner, Dausch and Kim cannot reasonably be considered to teach features corresponding to a monomer mixture consisting of:

- a) tert-butyl acrylate,
- b) methacrylamide and/or N-(tert-butyl)acrylamide, and
- c) acrylic acid, as recited in original claim 44.

Applicants submit that Dausch does not suggest such a mixture that consists of the above components, and, optionally, components d) and/or e).

Dausch teaches acrylate polymers for cosmetic preparations. As set forth at col. 1, lines 54-59, the polymers have a neutral odor and are, therefore, suitable for a wide use spectrum, in particular for formulations without added perfume oils. The objective of Dausch is achieved with acrylate polymers obtainable by free-radical polymerization of

- A) 30 to 99% by weight of tert-butyl acrylate and/or tert-butyl methacrylate,
- B) 1 to 28% by weight of acrylic acid and/or methacrylic acid, and
- C) 0 to 60 % of a further free-radically copolymerizable monomer.

As such, Dausch teaches that one of tert-butyl acrylate and tert-butyl methacrylate and one of acrylic acid and methacrylic acid is copolymerized. However, Dausch fails to teach polymers that mandatorily contain tert-butyl acrylate and acrylic acid, as recited in independent claim 33. Quite to the contrary, Example 1 contains, as set forth at col. 16, line 20, 140 g of methacrylic acid. Acrylic acid is not present. Moreover, all the examples in the Table at Col. 16, line 50 to Col. 17, line 18, are prepared from methacrylic acid but not from acrylic acid.

Accordingly, Dausch fails to anticipate the claimed subject matter because Dausch fails to teach selecting tert-butyl acrylate and acrylic acid as monomers.

Moreover, a skilled artisan would also not be guided by Dausch to select tert-butyl acrylate and acrylic acid as monomers, in particular not for a hair spray, as claimed. As noted at page 4, lines 9-12, of the specification, the claimed subject matter provides a hair spray composition having good rheological properties and good sprayability.

It is a critical feature of the claimed subject matter that tert-butyl acrylate and acrylic acid are selected as monomers, as evidenced by the Test Report submitted with the February 12, 2010 Response to non-final Office Action.

At page 4, the Office Action states that a showing of criticality is not relevant with regard to a rejection based on anticipation. However, Applicants maintain that Dausch fails to explicitly disclose polymers that mandatorily contain tert-butyl acrylate and acrylic acid. Thus, a skilled artisan would have to select these monomers from among all the monomers disclosed therein. There is nothing in Dausch that would guide the skilled artisan towards such a selection. Accordingly, Dausch fails to disclose the combination of all of the claim features as required by claim 33 and, therefore, to anticipate the claimed subject matter. As a result, the showing of criticality is highly relevant to the patentability of the instant claims.

Claims 33-40 and 56-61 are rejected under 35 U.S.C. §102(b) as being anticipated by WO 01/62809 to Kim et al., as evidenced by US Patent Application Publication No. 2003/0147929 to Kim et al., which is a US counterpart thereof.

The application of Kim suffers from the same deficiencies as the application of Dausch discussed above. In particular, Kim teaches cosmetic compositions comprising at least one polymer which comprises, incorporated in the form of polymerized units, not more than 50% by weight of at least one tert-butyl ester and/or N-tert butylamide of an α,β -ethylenically unsaturated carboxylic acid and at least one N-vinylamide and/or vinyl lactam and at least one polymerizable compound having a catiogenic and/or cationic group. However, Kim fails to teach

the mandatory use of tert-butyl acrylate and acrylic acid. Some of the polymers listed in Table 1 at paragraph [0240] of Kim include methacrylic acid, but acrylic acid is not used in the examples listed in Table 1. Acrylic acid is listed as one possible monomer at paragraph [0088] of Kim. However, there is no suggestion in Kim to use acrylic acid in combination with tert-butyl acrylate as a comonomer.

Moreover, the skilled artisan is not directed to selecting tert-butyl acrylate and acrylic acid for a hairspray composition, as claimed. Thus, as noted above, Kim fails to appreciate the criticality of the combination of tert-butyl acrylate and acrylic acid for a hairspray composition.

In view of the above amendment, applicant believes the pending application is in condition for allowance.

Applicant believes no fee is due with this response. However, if a fee is due, please charge our Deposit Account No. 22-0185, under Order No. 13111-00043-US1 from which the undersigned is authorized to draw.

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Respectfully submitted,

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